



POLICE DEPARTMENT

February 14, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jose Ruiz
Tax Registry 915951
Highway District No. 2
Disciplinary Case No. 86026/10

The above-named member of the Department appeared before me on January 13, 2011, charged with the following:

1. Said Police Officer Jose Ruiz, assigned to Highway 2, on or about January 26, 2009, failed and neglected to properly safeguard his off-duty firearm, Serial [REDACTED].

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS – GENERAL REGULATIONS
UNIFORMS AND EQUIPMENT

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pled Guilty, is found Guilty as charged.

COURTESY • PROFESSIONALISM • RESPECT

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent has worked for the Department for 15 years. Upon graduation from the Police Academy, he was assigned to Manhattan Traffic Task Force before being assigned to Highway Patrol where he has been for the last ten years.

The Respondent estimated that he has a little over a hundred arrests in his career. He asserted that he would have had more but he has primarily been involved with issuing summonses. When asked the number of summonses he has written in his career the Respondent said, "A lot."

On January 26, 2009, the Respondent was assigned to Highway 2 and at that time he had three lockers assigned to him. The Respondent testified that he owned two firearms at the time, his on-duty weapon and his off-duty weapon.

The Respondent stated that his off-duty firearm was a Smith & Wesson, he did not remember the model, but it was similar to a Centennial. The Respondent testified that prior to January 26, 2009, he kept his off-duty firearm in his third locker which was secured with a combination lock. The locker room it was kept in was used by police officers.

The Respondent asserted that neither other civilian members nor any other branch of the Department use that locker room and that only Highway 2 officers use that locker room. On January 26, 2009, the Respondent observed that the lock (on his third locker) was missing. He indicated that he kept his BDU pants¹, extra shirts, and his raincoat in that locker. The Respondent acknowledged that he did not have to go into that locker every day. He reaffirmed the lock was missing on the locker, and that the lock was "just gone."

¹ Tactical patrol pants

When questioned about the first time he noticed the lock gone, the Respondent stated it was on his first day back after several days off. The Respondent testified that when he saw that the lock was gone he checked the contents of the locker and realized that his off-duty weapon was missing.

As to what he did next, the Respondent stated that he, "Went to the -- initially, to the station house manager because I knew he was -- I knew the command, someone in the command was checking for lockers because they were going to redistribute them to other members of the service that I believe were coming." The Respondent testified that he reported his firearm missing and that he checked at home for the firearm just in case he had left it there.

The Respondent testified that in July 2009 he found his firearm while he was looking for a portable breath tester. The portable breath tester was assigned to the lieutenant. He (the Respondent) had gone, about a month prior, to the Highway District to pick up his portable breath tester and while he was there he was given the lieutenant's breath tester. He picked up both and brought them back to Highway 2.

When he got back to Highway 2, the Respondent explained, "[T]he lieutenant wasn't around, it was a midnight lieutenant, so I ended up giving it to Sergeant Silva at Highway 2." The Respondent was asked if the lieutenant asked for the breath tester or looked for it. The Respondent said, "Later on, between my vacation and Sergeant Silva's vacation and the lieutenant not being around since he was a midnight lieutenant, about three weeks to a month later it came up. They were asking me where it was."

The Respondent testified, "I initially had forgotten who I left it with I didn't know if it was him or the lieutenant So I wasn't sure what had happened to it " The Respondent stated that the breath tester was eventually found later that day

The Respondent stated that he helped look for the breath tester He looked everywhere, including behind the desk, where the telephone switchboard (TS) person sat He also asked around to determine if anyone had seen it

Eventually, the Respondent came to a point where he looked in the locker room He looked on top of the lockers where he found a lot of garbage In addition, on the far end of the wall, "all the way down," he found his missing weapon

The Respondent stated that his weapon was found in a leather bag which did not belong to him He noted that the bag was very dusty

The Respondent said that he opened the bag and that his gun was inside Asked to explain what he did when he saw his gun, the Respondent said, "Well, besides being beside myself, I then grabbed the bag from the bottom and then walked straight to the lieutenant with it in my hand without removing the weapon." The Respondent told the lieutenant what was inside the bag. The weapon was secured and vouchered by the Internal Affairs Bureau (IAB) The Respondent stated that he has not tried to retrieve the weapon from IAB

The Respondent was asked why he kept the gun in his Department locker He explained

Well, to me, it was the safest place to put it since it's in a police facility And the initial reason why I wasn't carrying it in the first place was because I was going through a separation with my wife at the time

Learning from what my dad had done back when he was on Brooklyn Battery Tunnel TBTA, he also did the same thing when he was separated from my mom. Just to avoid any possible allegations from my now ex, I felt it was the safest and best thing to do, not carry.

On cross-examination, the Respondent explained that he could not give an exact date for the last time he saw the weapon “ because I had been in and out of that locker for those items I mentioned, whether it be a raincoat, my BDU pants every time I’m on the TS, so I couldn’t give an exact date. But a date that we had written down as an official date was during gun inspection, and that’s where we came up with the October date ”

The Respondent acknowledged that October was, give or take, three months prior to the discovery that the firearm was missing.

The Respondent was asked, “Between that date and January 26, 2009, approximately how many times, if you recall, did you go to your locker, that third locker?” The Respondent said, “I would have to guesstimate around -- I would say around 16 or 20 times at least between ” The Respondent agreed that “in those 16 to 20 times in that approximate three-month period, [he was] certain that the lock was on there, on the third locker ”

The Respondent was asked, “On January 26, 2009, can you estimate approximately the last time you had been to that locker prior to that date?” The Respondent answered, “About a week prior, the week prior to my RDOs² ” The Respondent was then asked if he was off the week prior to January 26, 2009 and he stated that he “was off three days just prior, RDO, and then I was working the five days prior to

² Regular days off

that So it would be that week because that first one back I had to go in there for the particular pants that I needed ”

On further cross-examination, the Respondent indicated that prior to locating the firearm in the locker room in July 2009, he had no idea of its whereabouts To the Respondent’s knowledge, he is not aware of any misconduct on his part, or that of anyone else in the command, regarding the recovery of the firearm

The Respondent stated that he stored the gun “in the holster on its left side” on top of the top shelf in the locker He stated that there is only one shelf in the locker, that there are hooks on the sides, a pole, and that on the bottom is space to put his bag and boots

Questioned as to whether he checked for his firearm every time he went to that locker, the Respondent said, “every time I went in the locker, even if it wasn’t for the firearm, I checked to see if it was there ”

Questioned by the Court as to whether he ever found the portable breath tester, the Respondent said that it was found that same day and that the sergeant had it in his locker

PENALTY

In order to determine an appropriate penalty, the Respondent’s service record was examined, see Matter of Pell v Board of Education, 34 N Y 2d 222 (1974)

The Respondent was appointed to the Department on July 4, 1995 Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum

The Respondent testified that he stored his off-duty firearm in one of his Department lockers. The Respondent testified that the locker was in a facility solely used by Department personnel and that he had secured it with a combination lock. He stated that on January 26, 2009, after three days off, he went to the locker and discovered that the lock was no longer there and that his firearm was missing.

Approximately a half-year later, while looking for something else, he discovered the firearm in a bag on top of the lockers. The bag belonged to another member of the service who was no longer assigned to the command.

The Respondent testified that the locker in question was his third locker and he did not use it all of the time. On the other hand he did keep clothing in it and accessed it with some regularity. He said that he had been off for the three day period prior to discovering that the gun was missing. He said he probably last accessed the locker during the week prior to those RDOs.

It is also worth noting that the Respondent chose to store his off-duty weapon in a Department facility because he was in the midst of a divorce action and did not want to have the gun at home.

The Respondent pled guilty and has accepted his responsibility but asks that a penalty less than 20 days be imposed.

By storing his gun in a Department locker the Respondent was in compliance with Department rules regarding the storage of firearms. His decision not to bring the weapon home during a time of domestic strife seems, in and of itself, to have been a wise course of action.

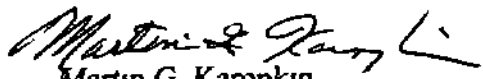
This Court is cognizant of at least two cases where members of the service accepted penalties of 20 days where firearms purportedly stored in Department lockers went missing See Disciplinary Case Nos 85517/09 and 85521/09 However, this Court notes there is an important distinction in this case, the gun was recovered

There is also some precedent for a reduced penalty where the firearm is recovered In Disciplinary Case No 86532/10, approved November 23, 2010, a six-year detective with no prior disciplinary record negotiated a penalty of ten vacation days for misplacing a gun at home He reported the firearm missing only to find that it had fallen behind his safe, where he recovered it

However the gun was lost in this case, it was and apparently remained in a police facility More significantly, it was recovered Those circumstances certainly provide some mitigation for this long-term member of the service with no prior disciplinary history

Accordingly this Court recommends a penalty of 15 vacation days

Respectfully Submitted,


Martin G Karopkin
Deputy Commissioner – Trials

APPROVED

MAR 22 2011
RAYMOND W KELLY
POLICE COMMISSIONER

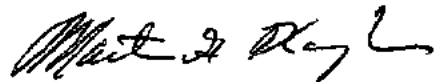
POLICE DEPARTMENT
CITY OF NEW YORK

From Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOSE RUIZ
TAX REGISTRY NO 915951
DISCIPLINARY CASE NO 86026/10

In 2009, the Respondent received an overall rating of 3.5 “Highly Competent/Competent” on his annual performance evaluation. He was rated 4.5 “Extremely Competent/Highly Competent” in 2007 and 2008. He has been awarded one medal for Excellent Police Duty.

[REDACTED] He has effected 111 arrests. He has no prior formal disciplinary record.

For your consideration



Martin G. Karopkin
Deputy Commissioner – Trials